

MINUTES

COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

Holiday Inn-North
2805 Highwoods Blvd., Raleigh, N.C. 27604

Wednesday, May 18, 2005

Attending:

Commission Members Present: Pender McElroy, Chairman, Floyd McCullouch, Don Stedman, Ph.D., Anna Scheyett, Lois Batton, Laura Coker, Clayton Cone, Dorothy Crawford, Pearl Finch, Mazie Fleetwood, Paul Gully, MD, Buren Harrelson, Mary Kelly, Judy Lewis, Martha Macon, Martha Martinant, Connie Mele, Emily Moore, Carl Shantzis, Ed.D., William Sims, MD, Fredrica Stell, Ann Forbes, Ellen Holliman, Marvin Swartz, MD and Tom Ryba

Commission Committee Ex-Officio Members: Joe Donovan, Carol Duncan Clayton and Debra Dihoff

Commission Members Absent: Bernard Sullivan, Jr. Ph.D., Ellen Russell (excused), George Jones, Lou Adkins (excused) and Porter McAteer

DMH/DD/SAS Staff Present: Steven Hairston, Mike Lancaster, Chris Phillips, Darlene Creech, Cindy Kornegay, Stacy Silvia, Tracy Ginn, Flo Stein, Michael Eisen, Christina Carter and Vanessa Holman

Others: Thomas Taaffe, Mary Jo Powers, Ginny Amendum, Tim Smith, Brenda Speece, Chris Jernigan, Craig Bass, Austin Connors, John Koppelmeyer, Chuck Hoderne, Rich Nelson, Gail Yashar, Pam Kelly, Tara Fields, Laura Chintapalli, Stephanie Alexander, Dorothy O'Neal, Ann Suggs, Carla Sockwell Morgan, Diane Pomper, Suzanne Wise, Angelina Watson, David Swann, Deanna Janus, Fred Waddle, John Crawford, Tomeko Moore and Christine Trottier

Handouts:

1. Mailed Packet:

- May 18, 2005 Commission for MH/DD/SAS Agenda
- February 17, 2005 DRAFT Commission Minutes
- April 13, 2005 DRAFT Rules Committee Minutes
- April 14, 2005 DRAFT Advisory Committee Minutes
- 10A NCAC 27G .1301 Residential Treatment for Children or Adolescents
- 10A NCAC 27G .1700 Residential Treatment for Staff Secure for Children or Adolescents
- 10A NCAC 17G .1900 Non-Hospital Psychiatric Residential Treatment for Children or Adolescents
- 10A NCAC 27G .1600 Therapeutic Family Treatment for Children or Adolescents
- 10A NCAC 27G .1800 Intensive Residential Treatment for Children or Adolescents
- Rule Reference Material 10A NCAC 27G .0104 Staff Definitions

Additional Handouts:

1. Advisory Committee Chair report
2. N.C. Mental Health Consumers' Organization brochure
3. "Removing the Barrier: Population-Specific Care and Access to Life in the Community", a brief by Laurie Coker
4. 10A NCAC 27G.1800 Intensive Residential Treatment – points
5. Summary of Division Recommendations for 10A NCAC 27G .1301 Residential Treatment, 10A NCAC 27G .1700 Residential Treatment Staff Secure and 10A NCAC 27G .1900 Psychiatric Residential Treatment Facility
6. Client to Direct Care Staff Ratios, Residential Treatment Staff Secure

Handout from Public Comment Period:

7. North Carolina Council of Community Programs "Comments of the .1700 Rules" dated May 9, 2005

Call to Order

Chairperson Pender McElroy called the meeting to order at 9:30 a.m. He welcomed all attendees and asked that everyone introduce themselves. Mr. McElroy reminded everyone that there would be a two hour lunch from 11:30 a.m. to 1:30 p.m. so that those desiring to do so could attend the Coalition 2001 Legislative Rally.

Approval of Minutes

The minutes of the February 17, 2005 were approved upon motion, second and unanimous vote with the following changes: add appropriate credential abbreviations to attendees' names and attempt to find out the last name for "Dave."

Chairman's Report

Mr. McElroy reported that seven of the eight gubernatorial Commission member appointments had been made for those terms expiring June 30, 2005. Lou Adkins declined reappointment. He congratulated the reappointed members who were: Lois Batton, Pearl Finch, George Jones, Floyd McCullouch, Pender McElroy, Emily Moore, and Donald Stedman.

Mr. McElroy stated that the Commission members voted at the February 17, 2005 meeting to pursue rulemaking for an appeals/complaint process for non-Medicaid consumers. However, a written opinion from Diane Pomper, Assistant Attorney General, stated that the Commission did not have rulemaking authority in this regard. Consequently, the Attorney General's Office is reluctant to move the rulemaking process forward. Mr. McElroy stated that this issue was still under discussion and that he would keep the members apprised of any developments.

Mr. McElroy recognized Laurie Coker who distributed a document entitled "Removing the Barrier: Population-Specific Care and Access to Life in the Community." She spoke briefly on the problem of inappropriate placements in Adult Care Homes. She relayed her recent experience visiting a 110-bed Adult Care Home facility, which appeared to have inappropriately placed residents. She encouraged the Commission members to support measures to ensure the appropriate evaluation and person-centered planning

for consumers exiting state facilities. She stated that facility based care is not a very efficient use of funds when consumers prefer other living arrangements.

DMH/DD/SAS Director's Report

Mike Moseley, Division Director, reported that he and Chairman McElroy had had a very productive meeting since the last Commission meeting. He congratulated the Commission members on their recent reappointments.

Mr. Moseley stated that Division staff had developed a timeline for APA Rules development, which had been shared with Chairman McElroy. The timeline outlines rules that need to be developed, amended and repealed over the next 12 months.

He also reported that DMH/DD/SAS and DMA staff recently traveled to Atlanta to meet with CMS regarding their review of three Medicaid state plan amendments which impact DMH/DD/SA services; two CAP/MR/DD waivers and the Medicaid Rehabilitation Option Service Definitions. CMS will notify the Divisions by May 20, 2005 if the CAP/MR/DD waiver will be delayed. The Divisions urged CMS to review the amendments in an expedient manner. The DMH/DD/SAS proposed that the implementation of the Rehab Option services be October 1, 2005 instead of July 1, 2005. This will provide a 90-day window for implementation if CMS approves them by July 1, 2005.

Mr. Moseley stated that a series of communications would be forthcoming regarding new service implementation issues. The first one regarding Intensive In Home Services for Children will be issued in the next few days.

Mr. Moseley noted that the Senate has passed a budget which has been transmitted to the House. He urged all stakeholders to advocate on behalf of mh/dd/sas funding to help avoid any negative financial impact.

In response to several questions, he briefly spoke about a 1) DHHS study underway regarding mental health needs in nursing home settings and 2) the Medicare Drug benefit.

Chairman McElroy expressed appreciation to Director Moseley and the entire Division staff for the work that is being done to advance mental health reform. He assured the Division staff that the Commission is very appreciative of its work, which is often done under great duress and stress and with diminishing resources. He reminded attendees (consumers, advocates, providers, commission members, staff, press) that all are on the same team with a common goal of advancing the cause of mh/dd/sa services for all North Carolinians.

Advisory Committee Report

Dr. Don Stedman, Chairman of the Advisory Committee, gave the Advisory Committee report. He noted the written report dated May 3, 2005 that was distributed earlier in the meeting. He outlined three major areas in which the Advisory Committee was concentrating: community service capacity development by LMEs, an adequately trained/credentialed workforce to deliver mh/dd/sa services and housing needs of consumers moving from institutions to the community.

At the April 14, 2005 Advisory Committee meeting Chris Phillips, Chief of DMH/DD/SAS Advocacy and Customer Services, gave an update on the status of Consumer and Family Advisory Committees (CFACs). There are currently 33 local CFACs in the state as well as a State CFAC. Part of their purpose is to provide input from consumers and families at all levels of service planning and delivery.

Dr. Stedman commended the work of Chris Phillips, the Consumer Empowerment Team, LMEs and all who partner to increase the input of consumers and family members. A motion was made, seconded and unanimously passed, commending the exemplary work of Division and LME staff.

Two speakers presented on housing issues. Kay Johnson, Housing Specialist with the DMH/DD/SAS, reported that one of her primary objectives is to pull people together all across the state to increase the awareness about housing issues for individuals with disabilities. There are 19 local housing specialists which now exist across the state.

Chris Estes, Executive Director of the N.C. Housing Coalition, presented on the "Campaign for Housing Carolina." Housing Carolina's objective is to build strong and widespread public support for a \$50 million annual appropriation to the North Carolina Housing Trust Fund. Dr. Stedman recommended to the Commission that they support the campaign. A motion was made, seconded and upon unanimous vote, the Commission voted to support "Campaign for Housing Carolina."

In response to Martha Marinat's question about data availability on the housing status of mh/dd/sa clients, Dr. Stedman talked about a N.C. TOPPS (Treatment Outcomes Performance Program System) pilot that would begin July 1, 2005. This measurement tool will provide valuable information about where consumers are living and if they are satisfied with their housing arrangements. In addition, Mike Moseley offered a Division staff person to report, at the next Commission meeting, on the data capacity of the DMH/DD/SAS.

Dr. Stedman reported that Dr. David Mills, a senior member of administration with the N.C. Department of Public Instruction, presented information on the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA). There are significant changes being required but due to the lack of regulations to date, states will be non-compliant as of July 1, 2005 (the implementation date).

Lastly, Phillip Hoffman, Chief of DMH/DD/SAS Resource and Regulatory Management, gave an update on the budget situation. Mr. Hoffman stated that it was early in the budget process to draw many conclusions about the final outcome.

Dr. Stedman noted that the next Advisory Committee meeting was July 14, 2005 and that the focus would be on personnel issues.

Rules Committee Report:

Floyd McCullouch, Chairman of the Rules Committee, reported on the April 13, 2005 meeting of the Rules Committee. He reviewed the main points of Dr. Michael Lancaster's presentation regarding 10A NCAC 27G .1700 Residential Treatment and

10A NCAC 27G .1900 Psychiatric Residential Treatment Facility. The primary comments received about these rules centered on the following issues:

- .1702 -.1704 – Qualifications of Staff, job title/position versus required staff functions
- .1704(b) – Client/Staff Ratios, large versus small facilities and client sleep hours
- .1704(e) – Staff present in the facility versus available
- .1705 – Behavioral Health Professional, licensed versus advanced degree in human services and experience

Mr. McCullough reported that there were several speakers who offered comments during the public comment period.

Since the Committee members were not recommending any additional changes to those made by the Division, they agreed to consider the final proposed rules at the May 18, 2005 full Commission meeting. With the 60-day comment period not ending until May 16, 2005, the final recommendations for the proposed rule adoptions/amendments for child residential treatment centers and Psychiatric Residential Treatment Facilities would not be available until the May 18, 2005 meeting.

Mr. McCullough stated that Dr. Lancaster would lead the Commission members through the final recommendations regarding 10A NCAC 27G .1301 Residential Treatment for Children or Adolescents, 10A NCAC 27G .1700 Residential Treatment for Staff Secure for Children or Adolescents and 10A NCAC 17G .1900 Non-Hospital Psychiatric Residential Treatment for Children or Adolescents later on in the meeting.

North Carolina Mental Health Consumers' Organization

Chairman McElroy introduced and welcomed Dorothy O'Neal, Executive Director of the North Carolina Mental Health Consumers' Organization (NC MHCO). Ms. O'Neal communicated greetings from the NC MHCO. She explained that the NC MHCO is a 600 member non-profit organization that is 100% consumer run. It has been offering support and advocacy to adults with mental illness since 1989. The organization is funded by the State of North Carolina through the Federal Block Grant Program.

She distributed a brochure about the NC MHCO and noted that peer support and advocacy is the primary activity of the organization. It provides a toll free "warm" line designed to deliver peer support and a listening ear. The line is not intended for crisis situations. NC MHCO has organized TEAMS, which are recovery focused support groups. TEAMS stands for Training, Encouragement, Advocacy, Membership and Support.

Ms. O'Neal shared information on WRAP, Wellness Recovery Action Plan, a program which her organization has been trained to implement. WRAP's primary goal is to incorporate recovery into daily living and incorporates things such as crisis plans, advance directives and trigger identification.

Ms. O'Neal presented Chairman McElroy a NC MHCO t-shirt on behalf of the NC MHCO membership.

The Commission broke for a 2-hour lunch. Some members attended the Legislative Rally sponsored by Coalition 2001.

Upon reconvening, Carl Shantzis noted that the Advisory Committee had voted during their April 14, 2005 meeting to recommend to the Commission that a resolution be drafted supporting a North Carolina lottery set aside for treatment of problematic gambling. A motion was made, seconded and unanimously passed to support such a resolution. Chairman McElroy and Advisory Committee Chair Stedman will send a letter to the appropriate legislators.

Proposed Rule Amendments and Adoptions

Chairman McElroy recognized Dr. Michael Lancaster, DMH/DD/SAS Clinical Director and thanked him and his staff for his leadership role in the rules development process.

Dr. Lancaster stated that his presentation would include proposed rule amendments for 10A NCAC 27G .1301 Residential Treatment for Children or Adolescents, proposed adoption of 10A NCAC 27G .1700 Residential Treatment Staff Secure for Children or Adolescents and proposed adoption of 10A NCAC 27G .1900 Non-Hospital Psychiatric Residential Treatment for Children or Adolescents.

Additionally, proposed adoption of 10A NCAC 27G .1800 Intensive Residential Treatment for Children or Adolescents and proposed repeal of 10A NCAC 27G .1500 Intensive Residential Treatment for Children or Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness would be presented for the Commission's approval to publish for public comment. He stated that 10A NCAC .1600 Therapeutic Family Treatment for Children or Adolescents was presented for information only and required no Commission action. These rules will be points for discussion with the Division of Social Services.

Dr. Lancaster reported that the rule comment grid would be updated on the DMH/DD/SAS webpage to include all comments received through May 16, 2005 and the Division's response to the comments.

Dr. Lancaster distributed a document entitled "Division Recommendations – Proposed Rules, 10A NCAC 27G .1301 Residential Treatment, 10A NCAC 27G .1700 Residential Treatment Staff Secure and 10A NCAC 27G .1900 Psychiatric Residential Treatment Facility. The handout summarized the additional recommendations being made regarding the rules including:

- .1301(a) – amends the .1300 rule to pertain to residential treatment, level II, program type services
- .1701 – proposes adoption of a separate licensure category for providers of residential treatment staff secure (Level III) for children or adolescents
- .1702 – proposes adoption of experience requirement for qualified professionals, specifies the duties of the qualified professional in five or less bed facilities and in six or more bed facilities and requires development of policies by the facility governing body further specifying the clinical and administrative responsibilities of qualified professionals

- .1704 (a) – proposes requirement for one direct care staff to be present in the facility at all times when children or adolescents are away from the facility
- .1704(b) – proposes an additional on-call direct care staff readily available by telephone or page and able to reach the facility within 30 minutes of the call or page
- .1704(c) – proposes direct care staff/awake children or adolescent ratios as follows:
 - two direct care staff for one, two, three or four awake children or adolescents
 - three direct care staff for five, six, seven or eight awake children or adolescents
 - four direct care staff for nine, ten, eleven or twelve awake children or adolescents
- .1705 – proposes requirement for licensed professional as opposed to advanced degree in human services and experience
- .1706(c) – proposes clarification of responsibilities concerning educational needs
- .1900 – proposes deleting “non-hospital” from the title and throughout the section
- .1902(f) – requires 24-hour on-site coverage by a registered nurse

Discussion ensued regarding the proposed rules presented by Dr. Lancaster. Marvin Swartz made a motion to delete the word “public” from .1301, line 18 and .1706, line 12 so that private schools could also be an option. Upon second, the motion passed unanimously.

Carol Duncan Clayton stated that she believed that the additional on-call staff required by .1704(b) should be a professional as opposed to a direct care staff because if an additional staff is required, most likely a treatment intervention is needed. She stated that in the field, the term “direct care” means paraprofessional.

After considerable discussion regarding this issue, Anna Scheyett made a motion that .1704(b) be amended to read: “A qualified professional shall be readily available by telephone or page; an additional on-call direct care staff shall be able to reach the facility within 30 minutes at all times.” Upon second, the motion passed unanimously.

Public Comment – Proposed Rules

Austin Connors with Children and Family Services Association of North Carolina stated that he believed there would be unanticipated consequences if the Commission approved the proposed rules. He noted that the increased staff/client ratios for asleep children and the requirement for a staff to be present at all times do not add value, just cost. He further stated that the rules are not consistent with the reimbursement allowed and the actual costs involved to provide the services.

Mr. Connors read a portion of a letter addressed to Chairman McElroy from Fred Gross with the Elon Homes for Children in Mecklenburg. Mr. Gross stated that his facility would be discontinuing the provision of Level III services due to the increased staffing costs since staffing costs are 80% of the operating budget.

Craig Bass with Alexander Youth Network stated that the requirement for having someone in the facility at all times when children are away from the facility would be cost prohibitive. In most homes when children are away, the staff is able to buy groceries, run errands, perform maintenance functions, etc. An additional person will now be required because these activities must still be performed. Mr. Bass stated that the Level III service will only be viable if the rates are revisited. He is also concerned about the requirement for 24-hour on-site coverage by a registered nurse in the PRTF. He stated that this is stricter than the federal requirements. He recommended changing the requirement to 24-hour on-site coverage by a nurse so that a licensed practical nurse could be utilized.

Mike Moseley stated that there is a commitment to revisit the residential treatment rates as soon as possible. He reiterated that the Commission should recommend rules that assure quality services.

Chairman McElroy complimented the services provided by Alexander Youth Network and stated that the Commission does want providers to be fairly and adequately paid so that quality providers can continue to provide services.

Fred Waddle with the North Carolina Community Support Providers Council stated that providers need the rates to go along with the rules. He is concerned that if the rates are not reconsidered in a timely manner, there could be a 4-6 month lag time during which providers may have substantial financial liability.

Leza Wainwright stated that there is currently a group looking at the rates and that as soon as the Commission makes a final decision on the rules, the information will be available to quickly do a rate review with the new rule requirements. She noted that all rates have to be reviewed by the DHHS Rate Review Board.

Chris Jernigan with Southmountain Children and Family Services stated that having a staff person available at all times at the facility when children are away from the facility was not an efficient use of tax payers' money. Southmountain is a campus-type program and he wondered if these types of programs could have "on-site" staff available as opposed to "at the facility."

Rich Nelson of The Children's Home spoke on two issues. He asked if the staff/client ratios were "per bed" or "per children." Dr. Lancaster responded it was "per children." He also stated that currently their Level III services are supplemented significantly with other funds and their viability over the long term will not be possible if rates do not get adjusted.

Rules Action

Mazie Fleetwood made a motion that the recommendations as outlined by Dr. Lancaster for 10A NCAC 27G .1301 Residential Treatment, 10A NCAC 27G .1700 Residential Treatment Staff Secure and 10A NCAC 27G .1900 Psychiatric Residential Treatment Facility be approved with the changes as already approved for .1704 (b) and deleting the word "public" before school in .1301 and .1706. Upon second, the motion was unanimously approved.

Anna Scheyett made a motion that the Commission advocate for the residential treatment and PRTF rates be reviewed for appropriateness as soon as possible. Upon second, the motion was unanimously approved.

Dr. Lancaster briefly reviewed the proposed adoption of 10A NCAC 27G .1800 Intensive Residential Treatment for Children or Adolescents. There are very few of these programs in the state. They are designed for very-high need children and adolescents. Upon motion and second, the Commission unanimously approved these proposed rules for publication for a 60-day comment period.

The proposed adoption of 10A NCAC 27G .1800 would require the repeal of 10A NCAC 27G .1500 Intensive Residential Treatment for Children or Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness. Upon motion and second, the Commission unanimously approved the proposed repeal of 10A NCAC 27G. 1500 for publication for a 60-day comment period.

There being no further business the meeting adjourned at 4:00 p.m.